The Disposition Process under the Juveniles Justice Standards Project

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THE DISPOSITION PROCESS UNDER THE
JUVENILE JUSTICE STANDARDS PROJECT

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I. INTRODUCTION

The Juvenile Justice Standards Project volumes were publicly discussed for months prior to their publication. Unavoidably, much of the discussion was based upon rumor regarding their contents. In that context, critics charged that the proposed Standards would “destroy the nation's juvenile court system and replace it with a 'junior criminal system'”1 and claimed that the Standards substitute the philosophy of “just deserts” for the traditional rehabilitative goals of juvenile justice.2 The news media described the Standards on disposition of delinquents as designed to “fit the penalty to the crime, no matter what the age of the perpetrator.”3 I do not intend in this writing to argue the merits of these changes—other contributors to this volume have done so.4 Rather, I wish to describe the extent to which the Standards have attempted to move away from traditional goals and to evaluate the internal consistency of the Standards in accomplishing any such movement.

First, I will briefly describe the disposition process established by the four most pertinent volumes: Dispositions5 (Linda Singer, Reporter); Dispositional Procedures6 (Fred Cohen, Reporter); Juvenile Delinquency and Sanctions7 (Sanctions) (John M. Junker, Reporter); and Corrections Administration8 (Andrew Rutherford and Fred Cohen, Reporters). I will then discuss in more detail selected features of the process, focusing on major ambiguities and discrepancies in the Standards. I will conclude by arguing that, although the Standards on disposition were probably intended to

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2 Statement of Judge Margaret C. Driscoll, President, National Council of Juvenile Court Judges, reported in 5 Juv. Just. Dig. 5 (Apr. 8, 1977).


5 Institute of Judicial Administration & American Bar Association, Joint Commission on Juvenile Justice Standards, Standards Relating to Dispositions (tent. ed. 1977) [hereinafter cited as Dispositions].

6 Institute of Judicial Administration & American Bar Association, Joint Commission on Juvenile Justice Standards, Standards Relating to Dispositional Procedures (tent. ed. 1977) [hereinafter cited as Procedures].

7 Institute of Judicial Administration & American Bar Association, Joint Commission on Juvenile Justice Standards, Standards Relating to Juvenile Delinquency and Sanctions (tent. ed. 1977) [hereinafter cited as Sanctions].

8 Institute of Judicial Administration & American Bar Association, Joint Commission on Juvenile Justice Standards, Standards Relating to Corrections Administration (tent. ed. 1977) [hereinafter cited as Corrections].
achieve a radical change in sentencing philosophy, in fact they reflect substantial confusion and ambivalence about the change.

II. OVERVIEW OF THE DISPOSITION PROCESS

At the cost of some oversimplification, I will briefly describe the major elements of the disposition process under the Standards. We can conveniently group these elements under three headings: substantive limits and goals, procedural and evidentiary requirements, and modification and enforcement.

A. Substantive Limits and Goals

Roughly, the Standards confine the juvenile court's delinquency jurisdiction to criminal offenses for which adults might be punished by incarceration. These crimes are divided into five classes of juvenile offenses, according to the criminal penalties. For example, crimes that would be punishable by death or imprisonment for more than twenty years if committed by an adult are class one juvenile offenses. At the other end of the scale are class five juvenile offenses, consisting of crimes punishable by six months' imprisonment or less. For each of the five classes the Standards prescribe the most severe penalty, or "sanction," and the maximum duration for which it may be imposed.

Juvenile court sanctions are classified into three major categories: nominal, conditional and custodial. Nominal sanctions consist of reprimands, warnings and other measures that do not infringe personal liberty. Conditional sanctions include those that infringe the juvenile's liberty but do not involve a change in his residence or legal custody, such as probation, restitution, community service, and counseling or educational programs. Custodial sanctions, which involve the coercive removal of a juvenile from his home, are further classified as placements in "nonsecure residences" and in "secure facilities." At the disposition stage of juvenile court proceedings, the judge is required to state the category and duration of the sanctions imposed on the defendant. The Standards limit the maximum sanctions available to the judge in each case according to the seriousness of the offense committed and, to a lesser extent, the juvenile's age and prior court record. Thus, the maximum sanction that could be imposed upon a class one juvenile offender is two years in custody or three years of conditional freedom. And a class five juvenile offense would subject the delinquent to no greater sanction than six months' conditional freedom or, if he had a prior record, to nonsecure custodial placement for two months.

Because the Standards establish maximum sentences but not minimums, the sentencing judge exercises broad discretion. The Standards attempt to limit this discretion by various procedural and evidentiary

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9 Sanctions pt. 5.2.
10 Id. pt. 6.2.
11 Id. pt. 5.1.
devices and by substantive guides to sentencing, which are discussed below. The latter presumably include the purposes of juvenile corrections that are set forth in part 1.1 of the Dispositions volume:¹²

1.1 Purpose.

The Purpose of the juvenile correctional system is to reduce juvenile crime by maintaining the integrity of the substantive law proscribing certain behavior. . . . This purpose should be pursued through means that are fair and just, that recognize the unique characteristics and needs of juveniles, and that give juveniles access to opportunities for personal and social growth.

Part II of the Dispositions volume, entitled “Dispositional Criteria,” contains the major guidelines for sentencing:

2.1 Least restrictive alternative.

In choosing among statutorily permissible dispositions, the court should employ the least restrictive category and duration of disposition that is appropriate to the seriousness of the offense, as modified by the degree of culpability indicated by the circumstances of the particular case, and by the age and prior record of the juvenile.

2.2 Needs and desires of the juvenile.

Once the category and duration of the disposition have been determined, the choice of a particular program within the category should be governed by the needs and desires of the juvenile.

Other Standards, discussed below, contain additional criteria to guide particular sentencing decisions, such as the decision to sentence a juvenile to secure custody.

The Standards contain another set of important substantive limitations on delinquency dispositions. These concern the power of juvenile courts and correctional authorities to compel delinquents to participate in “rehabilitative” treatment programs. In most instances the Standards permit the court to require participation in treatment programs as a term of a “conditional sanction” imposed on a delinquent. Such participation might, for example, entail attendance at educational or recreational programs, therapeutic counseling, or work experiences.¹³ However, such orders are an exception to the general principle adopted by the Standards that juveniles have the right to refuse all services.¹⁴ The Standards articulate two further exceptions to this principle: first, adjudicated juveniles may be compelled to participate in activities that are also legally required of juveniles who have not been adjudicated delinquent—such as compulsory school attendance and compulsory vaccination¹⁵—and second, they may be required to participate in programs necessary to “prevent clear harm

¹² See also Sanctions pt. 1.1 (establishing the purposes of a juvenile delinquency code); Corrections pt. 1.1 (purposes of juvenile corrections).
¹³ Dispositions pt. 3.2.
¹⁴ Id. pt. 4.2.
¹⁵ Id. pt. 4.2(A).
to their physical health." The right to refuse services is particularly crucial in light of another Standard that prevents the court from imposing conditional and custodial sanctions concurrently: custodial dispositions are "exclusive sanctions" that may not be used simultaneously with other sanctions. Therefore, children removed from their homes by the court may not be compelled to participate in any rehabilitative programs outside the narrow exceptions regarding physical health and compulsory education.

On the other hand, the volume on Dispositions gives to all delinquent juveniles a broad right to services:

4.1 Right to services.

All publicly funded services to which nonadjudicated juveniles have access should be made available to adjudicated delinquents. In addition, juveniles adjudicated delinquent should have access to all services necessary for their normal growth and development.

In sum, the Standards forbid the state to force residentially placed juveniles to take advantage of service programs but require the state to give them opportunities to participate in such programs voluntarily.

B. Procedural and Evidentiary Requirements

The volume on Dispositional Procedures establishes a procedural and evidentiary framework to govern the disposition process. A major feature of this framework is detailed regulation of information relevant to sentencing. The Standards distinguish between "essential" sentencing information, consisting of the juvenile's age, his prior record, and the nature and circumstances of the offense, and information on the juvenile's environment, history and personal characteristics. The Standards place special controls on the acquisition, use and sharing of information in the latter class. They also require a judicial disposition hearing at which the parties enjoy usual due process protections. Two important evidentiary principles apply at these hearings: a presumption against the imposition of custodial sanctions and a requirement that the choice of any disposition—other than a nominal one—be supported by a preponderance of the evidence. The sentencing judge must make specific findings on controverted factual issues and on the weight accorded to all significant dispositional facts considered in sentencing. Further, he must record both the reasons for selecting the particular disposition and "the objectives desired to be achieved thereby."

16 Id. pt. 4.2(B).
17 Id. pt. 3.3(C).
18 Procedures pt. 2.3(A).
19 Id. pt. 2.3(B).
20 Dispositions pts. 3.3(B) & (E).
21 Procedures pt. 2.5(B).
22 Id. pt. 7.1(A)(2).
The Standards severely restrict judicial and administrative authority to modify the nature or duration of the delinquent's sentence. They do permit correctional authorities to reduce the length of a juvenile's sentence by five percent for good behavior. But these officials have no discretionary power to grant or deny "parole" to juveniles in their care. Only the court can order a period of post-release supervision, and it must ordinarily do so—if at all—as part of the original sentence; for example, "six months nonsecure custody followed by six months of community supervision." Correctional agencies and other specified parties may ask the court to reduce the nature or duration of the original sentence, but the Standards strictly limit the grounds upon which such relief may be granted. Finally, the Standards provide enforcement mechanisms to deal with a juvenile's willful failure to comply with the dispositional order and with the state's failure to provide the juvenile with access to required services.

III. DISCUSSION

In this part, I shall discuss three aspects of the disposition process: scope of the judge's decision, disposition criteria and procedures, and criteria for modifying the disposition.

A. Scope of the Judge's Decision

One of the Standards' central themes is that juvenile authorities should have less discretion at the sentencing and correctional stages of delinquency proceedings than they have traditionally enjoyed. The Standards reflect this theme in setting offense-related maximum sentences and abolishing the executive's parole power. Another expression of this theme is the Standards' attempt to give the sentencing judge, operating within carefully structured legislative guidelines, more power to specify the dispositional program in which the delinquent will be placed. But the Standards are confused and inconsistent in drawing the precise boundary between judicial and executive authority in the placement decision.
Professor Cohen's Standards on Dispositional Procedures assume that the judge's role extends to specifying the actual program or facility in which the juvenile will be placed. Part 7.1(A)(3) requires the judge

when the disposition involves any deprivation of liberty or any form of coercion [to] indicate for the record those alternative dispositions, including particular places and programs, that were explored and the reason for their rejection.\(^9\)

Professor Junker's volume on Juvenile Delinquency and Sanctions supports the notion that the court, rather than the correctional agency, is responsible for deciding the juvenile's actual placement:

Juvenile court orders imposing sanctions should specify:

A. the nature of the sanction; and

C. where such order affects the residence or legal custody of the juvenile, the place of residence or confinement ordered and the person or agency in whom custody is vested . . . .\(^{10}\)

The latter Standard provoked a dissent:

Commission member Wald would not require that the disposition order specify the "place of residence" but only the level of secure or nonsecure confinement and would leave the precise placement to the discretion of corrections officials . . . .\(^{31}\)

In contrast, the Rutherford-Cohen Standards on Corrections Administration seem to assume the view advocated by the dissenting Commission member: part 4.11 elaborately regulates the procedures and criteria for agency decisions on program placement of youths sentenced to agency control.\(^{32}\) And, in the commentary to the Dispositions volume, Reporter Singer explicitly addresses the issue and agrees that program placement decisions are to be made by the correctional agency, not the courts:

It is not envisioned that the court (as opposed to an agency) will determine the identity of the actual program or facility to be used (e.g., a particular foster home) but that the court will determine the particular type of program (e.g., community work or foster home).\(^{33}\)

different committees and four reporters. The volumes were completed at different times over a six-year period; Reporter Cohen, for example, completed his Procedures volume while Reporter Singer's volume on Dispositions was still being written. The Project of which these Standards are a part involved four drafting committees working with thirty-three reporters who handled overlapping assignments. Also, the participants were spread across the United States. The problems of editorial coordination, inherently severe, were worsened by frequent central staff turnover during the life of the Project. Given this background, study of the Standards volumes will probably reveal a number of inconsistencies in terminology and substance. In some instances, to "conform" the discrepancies may require major policy decisions.

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\(^9\) Procedures pt. 7.1(A) (emphasis added).

\(^{10}\) Sanctions pt. 6.1.

\(^{31}\) Id. pt. 6.1(C) n.*. Commission member Polier concurred in this opinion.

\(^{32}\) See also Corrections pt. 7.7 (establishing the agency's authority to "transfer juveniles between programs within the category of disposition determined by the court"); accord, Dispositions, Commentary, pt. 1.2(F), at 23.

\(^{33}\) Dispositions, Commentary, pt. 2.2, at 39.
Taking this statement in Singer's commentary as expressing her volume's policy on this issue, the following allocation of sentencing responsibility appears: the court decides both the disposition "category" (for example, conditional or custodial sanction) and the sanction "type" or "subcategory" (community service, nonsecure group homes). The correctional authorities then choose the precise program within the specified subcategory in which to place the delinquent for the time period ordered by the court.

If judges are obliged to make specific program placements, major changes in the way in which courts are staffed will be required in many jurisdictions. This will be particularly true in states that are moving from systems of large state-run reform schools to "deinstitutionalized" systems featuring numerous private, community-based correctional programs. In such states, the placement decision requires thorough, up-to-date familiarity with numerous program alternatives. Few judges will have the time to acquire and maintain this knowledge, even if they have sufficient training and experience to make good placement decisions. Furthermore, the placement process—particularly in systems that rely heavily on private sector facilities—is often time consuming: the youth's needs and desires must be assessed, his family consulted, potential programs sought, funding arranged, vacancies found, applications processed, and so forth. Although some procedure for judicial monitoring of the placement process is clearly necessary, quaere whether the judge is the appropriate authority to have program-placement responsibility.

The conflict between the Cohen/Junker and Singer/Rutherford-Cohen Standards should therefore probably be resolved in favor of the latter. However, that cannot be accomplished simply by amending the Cohen/Junker volumes because even some of Singer's Standards adopt the Cohen/Junker position. For example, Dispositions part 2.2 directs the judge to choose "a particular program" according to the "needs and desires of the juvenile." And Dispositions part 1.2(G) prohibits the imposition of any coercive disposition "unless the resources necessary to carry out the disposition are shown to exist"; the commentary to this Standard explains by way of example that the court may not sentence a delinquent to attend a remedial program unless the "availability of such a program" is first established. Similarly, Dispositions part 3.3(E)(1) prohibits imposition of a nonsecure custodial sentence unless the court finds

34 Because the language of several Standards in Reporter Singer's volume conflict with this passage in her commentary, see notes 37-40 and accompanying text infra, one could also argue that Singer's position on this issue is the same as Cohen's and Junker's. However, the quoted commentary passage contains Singer's most explicit discussion of the matter and seems to reveal her intention. In the remainder of this writing, therefore, I shall assume that it does.

35 This practice remains necessary under the Standards. See Dispositions pt. 2.2.

36 See In re Sylvia Clear, 58 Misc. 2d 699, 296 N.Y.S.2d 184 (Fam. Ct. 1969) (account of one judge's valiant struggle to place a child).

37 See also Dispositions, Introduction at 2.

38 Dispositions, Commentary, pt. 1.2(G), at 30.
that “the needs of the juvenile . . . can be met by placing the juvenile in a particular nonsecure residence” (emphasis added). If the Standards ultimately give the placement authority to the correctional agency, these three sections, which conflict with Singer’s commentary to Dispositions part 2.2, should be amended accordingly.40

B. Disposition Criteria and Procedures

To make it easier to understand how the Standards would operate in practice, let us assume the following hypothetical case. Sixteen-year-old Walter has been found delinquent on a charge of assault and battery with a deadly weapon. The charge arose from an incident in which Walter and his friend George threw rocks at the sixty-year-old complainant, who was standing on a ladder painting the second story of his house. The boys fled when a passerby approached. The victim suffered several bruises and lacerations on his face and back. At the adjudication hearing, Walter and George admitted to the charge, explaining that they had been “just horsing around.”

This is Walter’s fifth involvement with the juvenile court. When he was twelve, he was twice brought to juvenile court on charges of unauthorized use of an automobile; both charges were dismissed after a period of “informal probation.” The following year he was found delinquent on a charge of breaking and entering and was placed on probation for one year. Six months ago, he was again adjudicated delinquent for assault and battery on his teacher. For that offense he was required to attend a private, nonresidential school that provides special educational services and psychological counseling. Codefendant George’s court record and disposition history are identical to Walter’s.

How should the court proceed at the disposition stage of these boys’ hearings? Assault and battery with a deadly weapon is a class two offense, for which the maximum disposition under the Standards is one year in custody or two years conditional sanction. Assume that Judge X sentenced Walter to one year in secure custody. The judge complied with the Standards’ requirements of written findings and reasons by making the following statement:

The facts are not disputed. The sixteen-year-old defendant, Walter, maliciously stoned the elderly victim under circumstances that could easily have resulted in permanent disability or even death. The victim did suffer painful injuries, for which he received hospital treatment. Furthermore, Walter is no stranger to this court; he has apparently not taken advantage of our former leniency. Testimony

39 See text accompanying notes 33 & 34 supra.
40 For example, Dispositions parts 2.2 and 3.3(E)(1) could be amended so as to be directed to the agency, not the court. Part 1.2(G) could be changed to require a showing at the disposition hearing that appropriate facilities exist, and a post-placement report to the court and defense counsel, within a specified period of time, on the completed placement. The Standard could also provide for a hearing on the report date, upon motion.
41 Dispositions pt. 2.1; Procedures pt. 7.1(A).
regarding the defendant's psychological and family background, which defense counsel offered in evidence, is irrelevant. I sentence Walter to serve one year in secure residential placement. In my view, no lesser disposition would deter the defendant or his like-minded peers from committing similar offenses in the future, nor would it meet the Standards' requirement that he be punished as he deserves.

Assume further that Walter's co-defendant, George, whose age, prior record and culpability in this delinquent act are all identical to Walter's, was sentenced by Judge Y to one year in secure custody. However, Judge Y suspended the sentence for two years on the condition that George continue to attend the special day school in which he was enrolled and that he take advantage of court-ordered psychiatric services for two years. Judge Y made the following statement for the record:

The facts are not disputed. This sixteen-year-old defendant, George, maliciously stoned the elderly victim under circumstances that could easily have resulted in permanent disability or even death. The victim did suffer painful injuries, for which he received hospital treatment. Furthermore, George is no stranger to this court; he has apparently not taken advantage of our former leniency. I sentence him, therefore, to one year in secure residential placement.

Although normally in such a case I would require the defendant to serve the sentence of confinement, I have decided to suspend George's penalty for two years, on the condition that he continue to attend the Hill School regularly and that he participate daily until 5:30 p.m. in its after-school counseling and recreation program. He must also participate in such individual and group therapy sessions as shall be prescribed by Dr. Jones of the Valley Mental Health Clinic. The Clinic is ordered to give George appropriate treatment services. At home, George must obey the reasonable requirements of his parents and of our probation office. Finally, he must refrain from violating the law.

This order is based on the following facts that I have found at the disposition hearing. My findings rest mainly upon the reports and recommendations of Dr. Jones, and of Dr. Peters, clinical psychologist at the Hill School:

1. George is the oldest of five children. He lives with his mother. When he was nine, his father, a housepainter, deserted the family.

2. George is of normal intelligence but has a severe perceptual learning disability. He performs substantially below grade level in all academic subjects. However, he has begun to make academic progress since he started attending the Hill School.

3. George has an emotional disturbance relating to his father's

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42 See Dispositions pts. 3.2(A), (C), (D). Thus, Judge Y effectively decided that George's disposition category should be a "conditional sanction."
abandonment of the family. "His present offense, directed against an adult male housepainter, was an expression of repressed feelings of rage against his absent father." (Letter from Dr. Jones.)

4. George's academic and emotional needs can best be served by continued attendance at the Hill School, if the School's resources are supplemented by outpatient psychiatric treatment at the Valley Clinic.

5. The state's attorney has failed to prove by a preponderance of the evidence that placement in either a nonsecure or secure residential facility would satisfy the criteria established by the Standards.

By this disposition I hope to protect the public from further acting-out behavior by George and at the same time meet this boy's needs. If, of course, by his future behavior he shows this court that he cannot cooperate effectively in his own rehabilitation, I shall be forced to commit him to the custody of the Department for placement in a secure residential facility.

Judges X and Y have both purported to act in accordance with the Standards; their dispositions and disposition philosophies, however, differ radically. They seem to disagree on two fundamental issues under the Standards: What relevance to disposition has information about the defendant's environmental and personal characteristics (hereinafter referred to for convenience as the "social history")? What goals should the disposition serve?

Considering only the recent public statements about the Standards, one might swiftly conclude that Judge X, whose decision fairly reeks of "just deserts" and "proportionality," has been faithful to the Standards, while Judge Y's sentence embodies the same rehabilitative approach that the Standards reject. This conclusion may be correct. But, as we shall see, the Standards hardly foreclose one from drawing the opposite conclusion.

1. The Relevance of Social History

Let us first consider the relevance of the delinquent's social history to disposition under the Standards. Did Judge Y properly rely upon such information in deciding to suspend the custodial sanction against George? Did Judge X properly exclude evidence of Walter's social history as "irrelevant"? Unfortunately, the Standards do not give a wholly clear answer. Professor Cohen's volume on Dispositional Procedures addresses the issue most directly, but not decisively:

2. Information base.

A. The information essential to a disposition should consist of the juvenile's age; the nature and circumstances of the offense or offenses upon which the underlying adjudication is based, such evidence not being limited to that which was or may be introduced at the adjudication; and any prior record of adjudicated delinquency and disposition thereof.
B. Information concerning the social situation or the personal characteristics of the juvenile, including the results of psychological testing, psychiatric evaluations, and intelligence testing, may be considered as relevant to a disposition.

C. The social history may include information concerning the family and home situation; school records . . . any prior contacts with social agencies; and other similar items . . . . (Emphases added.)

Beyond the statement that social history "may be considered as relevant," Professor Cohen's volume provides no criteria by which a court should decide when a defendant's social history is relevant. Rather, Cohen recognizes the intimate connection between this issue and the substantive goals of dispositions and accordingly defers to the Dispositions volume—apparently not yet drafted when he wrote.

The kind of information that is relevant and helpful in arriving at a suitable disposition cannot be separated from the goal or goals sought by the disposition. . . . As a general proposition, . . . the stronger the commitment to a benevolent or therapeutic objective, the stronger the claim to broader information about the juvenile and his or her situation. On the other hand, the stronger the commitment to a disposition fashioned on "just desserts" [sic] principles, the less need for information, beyond the nature and circumstances of the offense, age, and the prior record of adjudicated delinquency.

It is not within the scope of this volume to resolve the issues relating to the proper objectives for dispositions. Thus, the standards are drafted to accommodate both "just desserts" and benevolence.43

As modified by Cohen's commentary, therefore, Dispositions Procedure part 2.3(B) really means: "[Social history] may be considered as relevant to a disposition" to the extent permitted by the volume on Dispositions. Therefore, to resolve any controversy that may exist between Judges X and Y, to that volume we must turn.

The Dispositions Standards do not directly address the admissibility of a defendant's social history; one must resort to inference from the Standards, and to Reporter Singer's commentary. These sources make the Reporter's intent clear. Social history is not generally relevant to the judge's choice of the disposition "category and duration"; that decision is made, within the bounds of legislatively prescribed maximums, by reference solely to the class of offense committed, as well as the defendant's age, prior record, and culpability, considered in light of mitigating or aggravating circumstances surrounding his commission of the offense.44

Once the court has chosen the duration and category of sanction, the

43 Procedures, Commentary, pt. 2.3, at 31-32.

44 Dispositions pt. 2.1; id., Commentary at 2, 26, 35. The elastic phrase "circumstances of the particular case" in Dispositions part 2.1 is apparently intended to exclude such facts as George's repressed rage at adult male housepainters. See Dispositions, Commentary, pts. 2.1 & 2.2 passim; Procedures, Commentary, pts. 2.3(A) & (B), at 31-32. And, presumably, information as to the delinquent's prior record could not include evidence regarding his success or failure at particular court-imposed placements. See Procedures pt. 2.3; Dispositions, Commentary, pt. 2.1, at 35.
delinquent's social history becomes relevant and therefore admissible into evidence\(^4\) for the purpose of choosing "a particular program within the category" in accordance with the "needs and desires of the juvenile."\(^5\)

We may therefore infer that the disposition process under the Standards would consist of three stages. First, the judge chooses the disposition "category" and duration (for example, conditional sanction, two years) without reference to social history; in the second stage, the judge hears evidence of social history to select a disposition type within the category (supervisory sanction, community supervision);\(^4\) and in the third, post-judicial stage, the correctional authorities\(^4\) choose a particular program within the disposition category and type (attendance at the YMCA after-school program), again with regard to social history.

Was Judge X correct, then, to sentence Walter to secure custody without considering his social history? This depends, in part, upon the meaning of "category": is "custody" the category, or is "secure custody"?\(^4\) If the former, then Judge X erred by refusing to hear evidence of Walter's social history before deciding the disposition "type" within the category of "custody"; if the latter, then he did not.\(^5\) Unfortunately, the Standards lack precise definitions, or consistent usage, of such terms as "disposition," "category," "type," "level" and "particular program."\(^5\)

\(^{45}\) See Procedures pt. 2.5(A).

\(^{46}\) Dispositions pt. 2.2; id., Commentary at 2, 38-39. Singer states in her commentary to Standard 2.2:

Since the factors relevant to the selection of the appropriate duration and category of disposition ... may give no guidance to the sentencing judge regarding the most appropriate placement or particular program within the chosen category, it is appropriate to consider whatever social or psychological information has been introduced by the juvenile or by a presentence investigation concerning such factors as the juvenile's need for remedial education or training, his or her willingness to enroll in a special program for alcoholics or drug addicts, his or her willingness to make restitution, etc.

Dispositions, Commentary, pt. 2.2, at 38-39.

\(^{47}\) Presumably, then, the court's statement of its findings, reasons and objectives under Procedures parts 7.1(A)(1) and (2) would relate to "deserts" regarding the first stage decision and to "needs" regarding the second.

\(^{48}\) We continue here the assumption discussed above, see notes 33 & 34 and accompanying text supra, that the correctional agency, rather than the judge, has the responsibility under the Singer Standards for choosing particular programs. Under such a view, Judge Y overstepped his authority by ordering George to attend the Hill School and receive therapy at the Valley Clinic.

\(^{49}\) Another division within "custodial sanctions" is "continuous" or "intermittent" custody. Dispositions pt. 3.3(D). Does the court determine the particular level of custody with or without hearing social history?

\(^{50}\) Although in our hypothetical case Walter's lawyer offered to introduce evidence of social history, what if he had not? Does Dispositions part 2.2 affirmatively require the court and agency to gather and use social information in order to make any disposition or placement decisions? In this context, Dispositions part 2.2 may conflict with Procedures part 2.3(B).

\(^{51}\) An important related problem is the lack of terminological correlation between the Dispositions and Procedures volumes. The latter completely fails to distinguish among various levels of disposition decisions; it simply directs the court to "determine the appropriate disposition ... after the disposition hearing." Procedures pt. 7.1(A). But the Dispositions Standards envision several disposition decisions, made by different agencies and using different information bases. The Dispositional Procedures standards would be clearer and more useful if modified to take account of the procedural and evidentiary complexities
An additional problem that arises when we attempt to evaluate the use of social history by Judges X and Y concerns the Standards' substantive criteria for imposing custodial sanctions. Whether we consider "custody" or "secure/nonsecure custody" as the "category" that the judge must choose without reference to social history, a close reading of Dispositions part 3.3(E) strongly—if not compellingly—suggests the impossibility of deciding whether to impose any custodial sanction without considering the delinquent's social history. This point has been discussed elsewhere in this symposium.\(^{53}\) We must therefore conclude that Judges X and Y both erred, the latter for deciding George's disposition category, "conditional sanction," on the forbidden basis of social history, and the former for sentencing Walter to secure custody without inquiring whether that sanction was "necessary" to prevent Walter from engaging in further antisocial conduct—an inquiry that could not rationally occur without reference to his social history.\(^{54}\)

Thus far in this section we have been discussing the first issue upon which our two hypothetical judges disagree: the relevance of social history to dispositions. Let us now turn to their second disagreement: what are the proper goals of dispositions under the Standards?

2. The Goals of Disposition

As the preceding discussion has shown, the criteria in Dispositions part 3.3(E) governing the imposition of custodial sanctions force one to question descriptions of the Standards as single-mindedly devoted to "just implied by the Standards on Dispositions. Probably, the judicial disposition hearing must be divided into stages according to the admissibility of social history.\(^{52}\)

\(^{52}\) 3.3 Custodial.

E. Levels of custody. . .

1. Nonsecure residences.

No court should sentence a juvenile to reside in a nonsecure residence unless . . . the court finds that any less severe disposition would be grossly inadequate to the needs of the juvenile and that such needs can be met by placing the juvenile in a particular nonsecure residence.

2. Secure facilities.

b. No court should sentence a juvenile to confinement in a secure facility unless . . . the court finds that such confinement is necessary to prevent the juvenile from causing injury to the personal or substantial property interests of another.

Dispositions pt. 3.3(E). See also Dispositions, Commentary, pt. 3.3(E)(1), at 69-70.

\(^{53}\) See Panel Discussion, supra note 4, at 771-72.

\(^{54}\) One cannot escape this dilemma by calling "custody" the "category" and concluding that, having imposed that sanction, Judge X could (on remand, let us say) hear evidence of social history to decide in which level of custody to place Walter. In many cases a delinquent sentenced to "custody" on "just deserts" principles will not satisfy the contrasting criteria of Dispositions part 3.3(E), which must be met before the court can sentence him to either secure or nonsecure custody. Because all custodial facilities are of one type or the other, in such cases the custodial sanction simply becomes unavailable. A saving interpretation of this contradiction in the Standards is difficult to imagine.

This analysis suggests that, contrary to Procedures part 2.3(B), the court should be required to consider evidence of the defendant's social history before choosing any disposition on the basis of his "needs."
THE STANDARDS' DISPOSITION PROCESS

deserts" or "proportional punishment. But those descriptions have been offered by critics, not supporters, of the Standards. What do the Standards themselves establish as dispositional goals?

By way of general background, let us recall an important distinction that has been made by Professor H.L.A. Hart. It is the distinction between "general justifying aims" of punishment, and "limiting principles of distribution"—or of "allocation"—of punishment. "Just deserts," for example, might be chosen as the justifying aim of punishment; that is, we might choose to sentence an offender in order to make him suffer for his wrongdoing. Or, we might reject "just deserts" as a goal and adopt crime reduction as the justifying aim of punishment, that is, we might fix an offender's sentence according to its expected effect on the incidence of crime. Concurrently, we might employ "just deserts" as a limitation on the "distribution" of punishment to particular offenders by providing that no sentence shall be disproportionately severe in relation to the offender's culpability. In that case, for example, a sentence that might be justified on preventive grounds—such as ten years' imprisonment for jaywalking—would be limited by application of the "just deserts" principle and therefore reduced to a penalty that was more proportionate to the defendant's culpability.

Returning to our hypothetical case under the Standards, Judge X has justified Walter's sentence on two grounds: crime prevention (deterrence) and "just deserts." Judge Y has also aimed for prevention ("protect the public") and for rehabilitation—the nonpunitive goal of traditional

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55 I understand "just deserts" and "proportionality" to be related to the concepts of "retribution" and "culpability." "Retribution" has varying meanings, but we may define it here as the infliction of pain or suffering on an offender who is culpable. See N. Walker, Sentencing in a Rational Society 5-19 (1971); Hart, Prolegomenon to the Principles of Punishment, in H.L.A. Hart, Punishment and Responsibility 9 (1968). "Culpability" ("guilt," "blameworthiness") in turn is measured by reference to two sorts of factors: the severity of the harm caused ("seriousness of the offense") and the offender's moral/psychological relationship to his harmful act (mens rea, age, mental health, etc.). "Just deserts" ("proportional punishment") is punishment whose severity is proportional to the offender's culpability. "Just deserts," then, is a refinement of "retribution" that adds the element of proportionality.

56 Judge Margaret C. Driscoll has been quoted as saying in reference to the Standards: "All of a sudden it has been decided that the 'just deserts' rationale is the only answer to juvenile crime." 5 Juv. Just. Dig. 5 (Apr. 8, 1977). See also dissenting remarks of Commissioners Patricia M. Wald ("I hope we are not so cynical as to build a juvenile justice system on the tarnished 'just deserts' model of the adult penal system," Dispositions at 135) and Judge Justine Wise Polier ("[t]he right of a child to treatment ... is subordinated to the concept of 'proportional punishment,'" id. at 135).

57 See note 55 supra.

58 Of course, a correctional system might—and usually does—explicitly adopt multiple, and even conflicting, justifying aims. This requires the sentencing judge, acting with more or less guidance from the legislature or judicial administration, to decide upon a sentence that reflects a proper accommodation among those aims.

59 Preventive devices include, inter alia, deterrence, reform and restraint. The preventive approach is often called the "utilitarian" approach. See generally N. Walker, supra note 55, ch. 3, at 3-4.

60 Professor Walker refers to an advocate of this use of the retribution principle as a "limiting retributivist." Id. at 14-15.
juvenile court disposition. Which, if either, judge has correctly observed the goals of disposition under the Standards?

Although the Standards and commentaries occasionally refer to the goal of "just deserts" or "proportionality," they do not unambiguously embrace it. In her strongest statement along these lines, Reporter Singer writes:

these standards unequivocally take the position that justice and fairness demand that the system respond only to past illegal behavior, rather than to predictions of future conduct.\textsuperscript{61}

However, she confusingly adds that the Standards reflect "an accommodation between the views of those who would advocate either a strict proportionality or a strict treatment approach."\textsuperscript{62} Reporter Cohen readily acknowledges the same compromise in his volume.\textsuperscript{63}

Disposition Standards 1.1 and 2.1, quoted above,\textsuperscript{64} respectively establish the major goals of disposition: part 1.1 adopts crime prevention as the general justifying aim of juvenile corrections; part 2.1 seemingly adopts "just deserts" as the primary guide to the distribution of punishment in individual cases.\textsuperscript{65} How do these two Standards operate together and in relation to other elements of disposition under the Standards?

If the general aim of juvenile corrections is to "reduce juvenile crime by maintaining the integrity of the substantive law proscribing certain behavior and by developing individual responsibility for lawful behavior,"\textsuperscript{66} then surely one must applaud the deterrent rationale of Walter's sentence: individual and general deterrence are both recognized devices for preventing crime and for promoting individual responsibility.\textsuperscript{67} Within the scope of part 1.1, Judge X might also have considered the restraining and rehabilitative functions of his sentence, which also serve preventive goals. Or so it would seem from that part's language. But the Reporter's

\textsuperscript{61} Dispositions, Introduction at 2 (emphasis added).
\textsuperscript{62} Id.
\textsuperscript{63} After describing the contrasting procedural implications of dispositional goals centered on treatment and "just deserts," Cohen writes:

Between these two extremes lies the view that, while an adjudication of delinquency is closely analogous to a finding of criminal responsibility, dispositional procedures should be sufficiently flexible to reflect the relative seriousness of the underlying conduct. An adversary type format, as will appear, can be made consistent with obtaining help as well as obtaining a just disposition.

Procedures, Introduction at 6. Cohen also includes the following among the objectives of his Standards: "[W]ithin the legislative limits fixed for the underlying offense, provide an opportunity to fashion a disposition responsive to the individual condition or situation of the juvenile." Id. at 14.

\textsuperscript{64} See text following note 12 supra.
\textsuperscript{65} Significantly, the traditional juvenile court goal of "rehabilitation" is omitted from both Standards. As we have seen, the Standards attempt to relegate considerations of the juvenile's "individual needs" to a secondary stage of the disposition process. See discussion at part III A supra. This represents a major shift in dispositional philosophy.

\textsuperscript{66} Dispositions pt. 1.1.

\textsuperscript{67} See N. Walker, supra note 55, chs. 4, 5; Hart, Punishment and the Elimination of Responsibility, in H.L.A. Hart, supra note 55, at 158, 181-82.
commentary\textsuperscript{68} belies this understanding: neither deterrence\textsuperscript{69} nor rehabilitation,\textsuperscript{70} we are told, can be accepted as “fundamental purposes”\textsuperscript{71} of the juvenile correctional system. Prevention through the incarceration of offenders is not discussed. And retribution, also, is implicitly dismissed as a justifying aim.\textsuperscript{72}

How, then, can Walter’s sentence serve the preventive purposes of part 1.1? The commentary states:

[T]he standard is intended to serve as a limiting principle designed to narrow the aims of the correctional system to a more modest perspective. . . .

In searching for the limiting principle . . . the standard returns to some of the basic elements of Anglo-American law. One important function . . . is to ensure that the code’s substantive provisions are observed by making the strictures of the code credible. Thus . . . certain actions are forbidden by law and designated as offenses “to announce to society that these actions are not to be done and to secure that fewer of them are done.”\textsuperscript{73}

The commentary goes on to explain that the Standard attempts to promote the development of individual responsibility “by providing opportunities for personal and social growth.”\textsuperscript{74}

This commentary invites several critical questions. First, how will the correctional system “ensure” the observance of substantive laws if not by resort to preventive techniques such as deterrence, restraint and rehabilitation, all of which the drafters reject? Or have the utilitarian goals professed in part 1.1 no functional significance? Second, does not the proper route to developing “individual responsibility” for lawful behavior lie in the forthright application of punishment for delinquency, rather than in the delivery of services to facilitate “growth”?\textsuperscript{75}

Finally, we must examine the role and operation of the “just deserts” principle.

A fundamental confusion arises from an apparent contradiction in the Dispositions volume. In the commentary to part 1.1, Reporter Singer implicitly rejects retribution as a “primary” aim of juvenile corrections.\textsuperscript{76}

\textsuperscript{68} Dispositions, Commentary, pt. 1.1, at 15-20; see note 85 infra.
\textsuperscript{69} Dispositions, Commentary, pt. 1.1, at 180.
\textsuperscript{70} Id.
\textsuperscript{71} Although the commentary speaks only of “fundamental purposes,” the context makes plain the rejection of these aims as primary sentencing rationales.
\textsuperscript{72} Dispositions, Commentary, pt. 1.1, at 16.
\textsuperscript{73} Dispositions, Commentary, pt. 1.1, at 18, quoting H.L.A. Hart, Prolegomenon to the Principles of Punishment, in Theories of Punishment 358 (S.E. Grupp ed. 1971) (emphasis added).
\textsuperscript{74} Id. at 19.
\textsuperscript{75} Surely a major argument against the operation of the “rehabilitative ideal” in juvenile court is that society’s reluctance to punish misconduct hampers the development of adolescent self-control. See D. Matza, Delinquency and Drift 90-96 (1964); Hart, The Aims of the Criminal Law, 23 Law & Contemp. Prob. 401, 410 (1958); Katz, Law, Psychiatry and Free Will, 22 U. Chi. L. Rev. 397, 399 (1955).
\textsuperscript{76} Dispositions, Commentary, pt. 1.1, at 16.
This would be understandable if the Standards employed "just deserts" simply as a limitation on the distribution of punishment to individual offenders; parts 1.2(E) and (F), restricting sentencing discretion within the bounds of graded statutory maximums, do precisely that. But part 2.1 apparently makes "just deserts" the substantive guide to setting the disposition category and duration, rather than an upper limit on a sentence determined with reference to other disposition goals. Part 2.1 directs the judge to impose the "least restrictive [penalty] that is appropriate to the seriousness of the offense, as modified by [the defendant's] degree of culpability." Culpability is calculated by considering three factors: the defendant's age, his prior record and the particular circumstances of his offense.

Two sets of questions arise regarding part 2.1. First, how do these dispositional criteria relate to the general purposes of corrections set forth in part 1.1? (If retribution is not the purpose of proportional sanctions, what is?) How do these dispositional factors relate to the special criteria for the imposition of custodial custody? To the standard requiring the reduction or termination of dispositions if required services are not being provided?

Second, how does the judge select the "least restrictive" penalty that is "appropriate"? In Walter's case, for example—putting to one side Judge X's arguably erroneous failure to consider the defendant's social history under Dispositions part 3.3(E)—was the choice of a custodial sanction proper? Recall that the Standards establish a presumption against the use of custodial sanctions and require evidentiary support of any chosen category of sanction by a "preponderance." This means that "the burden of persuading the court that less severe sentencing alternatives would be inappropriate... rests with the state." Presumably, the prosecution must establish this negative proposition before the court hears any evidence of the defendant's social history. Given the admissible facts—age, prior record and commission of the offense under the circumstances

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77 See text accompanying notes 57-60 supra. Singer's commentary at 18 actually describes part 1.1 as embodying the Standards' "limiting principle" for sentencing; "just deserts" is never so described. Compared with the open-ended rehabilitative approach of traditional juvenile court dispositions, preventive principles do represent a more limiting, modest correctional goal. But, as between crime prevention and "just deserts," the Standards are unclear about which, if either, principle describes a substantive aim of sentencing, and which describes a limit upon pursuit of that aim.

Compare Sanctions part 1.1(B): "The purposes of a juvenile delinquency code should be: ... to safeguard conduct that is without fault or culpability from condemnation as delinquent..." This language implies the use of retribution as a limiting principle, not a justifying aim, of punishment.

78 See text accompanying note 72 supra. Retribution as a justifying aim of punishment is discussed by N. Walker, supra note 55, at 5-6.

79 Dispositions pts. 3.3(E)(1) & (2).

80 Dispositions pt. 4.1(D)(1); see Panel Discussion, supra note 4, at 771-72.

81 Dispositions pt. 3.3(B).

82 Procedures pt. 2.5(B).

83 Dispositions, Commentary, pt. 2.1, at 38.
shown—is the “inappropriateness” of, let us say, a conditional sanction for Walter a matter susceptible of factual “proof,” or a matter of values?

Reporter Singer distinguishes the “least restrictive alternative” test in Dispositions part 2.1 from its parent doctrine in criminal corrections, pointing out that the latter test typically refers to public safety or other penal purposes, but part 2.1 does not. The commentary explains the change as follows:

[R]equiring that the court impose the least drastic sentencing alternative that is “consistent with the goals of the penal system” . . . gives little guidance, especially in light of our limited knowledge regarding which punishments deter and which offenders present a threat to the public safety.

This passage implies that the “seriousness of the offense” criterion of part 2.1 provides more objective guidance and certainty than “protection of the public.” That is a most doubtful proposition.

C. Criteria for Modifying the Disposition

Part 7.1(B) of the Standards on Dispositional Procedures concerns post-sentencing modification of the disposition:

B. The court may correct an illegal disposition at any time and may correct a disposition imposed in an illegal manner within [120 days] of the disposition.

The volume footnotes a dissenting view:

Commission member Justine Wise Polier regards this provision for correcting dispositions as too narrow. She does not believe it should be limited to illegal dispositions, but should embrace the requirement to review dispositions when the child, the parents, or the agency having custody of the child requests review by reason of a change of circumstance or evidence that the child is ready for a less restrictive placement.

This disagreement between Judge Polier and supporters of the Standard as written plainly relates to the conflict between advocates of “treatment”

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**Footnotes:**

84 Dispositions part 3.3(E)(2)(b) uses a more traditional, preventive test. And if one interprets “needs of the juvenile” as a euphemism for “needs of the public”—a common tendency in juvenile courts—so does part 3.3(E)(2)(a). From the standpoint of policy, would not the euphemistic version make better sense than the literal one?

85 Dispositions, Commentary, pt. 2.1, at 38. This same “lack of knowledge” is the drafters’ reason for rejecting rehabilitation and deterrence as sentencing goals under Dispositions part 1.1. Id., Commentary, pt. 1.1, at 15-19. For an opposing view of the policy implications arising from insufficient empirical evidence on the utility of punishments, see N. Walker, supra note 55, at 61-62.

86 Perhaps the hardest question which the retributivist has to answer is “How should we decide the form or degree of suffering which is appropriate to the offense?” . . . [R]etributivists find it difficult to suggest any **objective** measure of appropriateness. Some seem to appeal to a kind of intuition . . . Others seem to appeal to a consensus of opinion.


87 Procedures pt. 7.1(B), n.*.
and "just deserts." Part 7.1(B) is consistent with the "just deserts" philosophy expressed in Dispositions part 2.1, with the abolition of discretionary parole mandated by Dispositions part 5.3, and with the general principle that sentenced juveniles may refuse to participate in correctional treatment programs stated in Dispositions part 4.2. But Dispositions part 5.1, which impliedly supersedes the criteria of Dispositional Procedures part 7.1(b), takes us in a different direction:

Dispositional orders may be modified as follows:

5.1 Reduction because disposition inequitable.

A juvenile, his or her parents, the correctional agency with responsibility for the juvenile, or the sentencing court on its own motion may petition the ... court ... at any time during the course of disposition to reduce the nature or the duration of the disposition on the basis that it exceeds the statutory maximum; was imposed in an illegal manner; is unduly severe with reference to the seriousness of the offense, the culpability of the juvenile, or the dispositions given by the same or other courts to juveniles convicted of similar offenses; or if it appears at the time of the application that by so doing it can prevent an unduly harsh or inequitable result. (Emphasis added.)

This Standard, of course, substantially expands the grounds of modification allowed by Dispositional Procedures part 7.1(B) in the direction advocated by Judge Polier. Depending upon how one interprets the flexible language of the final clause, Dispositions part 5.1 may also compromise the principle of "just deserts."

Assume, for example, that Walter and George have both been sentenced to one year's custody in the same secure facility. After four months the correctional agency petitions the court requesting permission to release George to the custody of his parents so that he may return to the Hill School and receive outpatient therapy at the Valley Clinic. The agency supports the petition with affidavits\(^8\) from several correctional workers attesting to George's improved attitude, his increased self-control, and an improvement in his mother's ability to cope with his needs, and so forth. Furthermore, the affiants expressly relate George's improvement to the fact that he and his mother have voluntarily\(^9\) participated in several of the facility's treatment programs during George's stay at the facility. (They contrast George's desire for self-improvement with his friend Wal-

\(^8\) See Corrections pt. 5.1(B).
\(^9\) An important side issue arises from the Standards' prohibition (Dispositions pt. 3.3(C)) on court-ordered remedial programs for delinquents sentenced to custodial sanctions: is the prohibition waivable? One would expect many defendants to choose submission to court-ordered (nonsecure) custodial treatment services as the price of avoiding secure confinement or transfer to criminal court. The Standards do not discuss this possibility. (The Standards apparently do not prohibit the court from ordering the correctional agency to make special services available to a confined juvenile—but a judge considering whether to order either secure custody or transfer to criminal court would probably not be dissuaded from either action by the juvenile's bare, unenforceable promise to participate in services to which the court's order would ensure access.)
ter's "negativism and passivity.") May the court grant the agency's petition?

Although an affirmative decision would arguably rest upon an over-generous interpretation of the phrase "unduly harsh or inequitable," consider the Reporter's commentary to part 5.1:

The considerations relevant to the court's determination of whether to reduce a disposition are the same that were relevant to the initial sentencing decision (see Standard 2.1), with the addition of any information . . . concerning the behavior and circumstances of the juvenile subsequent to imposition of the disposition. In the latter case, reduction would be indicated when, for example, the circumstances (in addition to the seriousness of the offense and the juvenile's age and prior record) that warranted imposition of a custodial disposition pursuant to Standard 3.3 E. no longer exist or when the juvenile's behavior indicates that a disposition as drastic as commitment to a secure facility no longer is required. 90

It is most difficult to reconcile the italicized language with the volume's virtual abolition of parole,91 or the view that the "needs" criteria of Dispositions part 3.3(E)(1) and (2)—governing the imposition of custodial sanctions—are anomalous departures from the Reporter's intention to implement the "just deserts" principle. The language also undermines the juvenile's right to refuse services. As Reporter Singer states:

Inherent in the right to refuse services is the requirement that juveniles not receive different treatment according to whether or not they choose to participate in correctional programs. Juveniles who voluntarily choose to participate should be treated no more leniently than those who do not, and juveniles who exercise their right to refuse should not be penalized in any way for so doing.92

Indeed, the Reporter's commentary stresses that sentence modification petitions under part 5.1 "should not be denied because of the juvenile's 'attitude' or because of the exercise of his or her right to refuse services or participation in programs pursuant to Standard 4.2."93 But this disclaimer would hardly comfort Walter, who would learn that George's early release ("parole"?) was justified not because he had participated in treatment services, but because, having participated, his conduct showed that his confinement was "no longer required" under Dispositions parts 3.3(E)(2)(b) and 5.1. In such a system, Walter and his family might be well advised "voluntarily" to accept any proffered treatment services.94

90 Dispositions, Commentary, pt. 5.1, at 127 (emphasis added).
91 If "improved behavior" qualifies a defendant for court-ordered release, one could easily foresee routine agency petitions for modification, encouraged by bureaucratic pressures of "bed space" and the like. The affidavits submitted in George's case would not, of course, attest to purely objective "facts." See Panel Discussion, supra note 4, at 765-66 (remarks of Professor Cohen).
92 Dispositions, Commentary, pt. 4.2, at 102.
93 Id., Commentary, pt. 5.1, at 127.
94 See Corrections pt. 4.10(E) (consent to receive services).
IV. Conclusions

The overriding goal of disposition in juvenile courts traditionally has been "rehabilitation," not punishment. At times we have justified the rehabilitative goal in terms of crime prevention, or have hypocritically used rehabilitative rhetoric to mask hidden preventive goals. The goal of crime prevention, we might therefore say, has occupied an important, vaguely recognized place in traditional juvenile court sentencing. In sharp contrast, the distribution of "just deserts" until now has had no legitimate place.

The Juvenile Justice Standards Project proposed Standards on disposition purportedly effect a radical shift in juvenile court philosophy from "rehabilitation" to "just deserts." Our analysis has shown that the Standards indeed attempt to reject rehabilitation as a primary dispositional goal. But, even focusing on design rather than implementation, they only partially adopt the principle of "just deserts"; to a considerable extent, they also reflect the aims of prevention and rehabilitation.

The Standards reflect the "just deserts" principle in the following key respects: graded maximum penalties; the requirement that within those maximums the court select the penalty most "appropriate" to the delinquent's culpability and degree of moral responsibility; restrictions on the court's power to base the sentence on offender-related information; and the abolition of parole. But other Standards qualify and, in some respects, contradict the "just deserts" principle. No matter how serious the offense or culpable the offender, the judge's sentencing discretion is unconstrained by minimum sentences. And the Standards restrict custodial dispositions—which normally would be applied to the most serious offenders—by tests that refer to values of crime prevention and rehabilitation (not "just deserts") and by a presumption against removing delinquents from their homes. Finally, an ambiguous Standard apparently empowers the courts to reduce any disposition on grounds unrelated to the "just deserts" principle. In view of these points, to speak of the Standards as if they require judges to sentence delinquents according to penalties that "fit the crime" is highly misleading.

Not only is the purported adoption of "just deserts" sentencing belied by the incorporation of such opposing principles as prevention and rehabilitation, but, in addition, the Standards fail to articulate a coherent interrelationship among these various sentencing aims and criteria. This is highly confusing.

In sum, one cannot fairly say that "just deserts" is "the" disposition philosophy expressed in the Standards. Although it receives a novel prominence among the Standards' disposition aims, it is only one among several such aims. This is not to suggest that sentencing can or should proceed according to any single value. But "[t]he problem ... is one of the priority and relationship of purposes as well as their legitimacy ..."95

95 Hart, supra note 75, at 401.
More work is needed to clarify what are the legitimate aims of disposition under the Standards and why particular dispositional criteria are appropriate at various points of the decision-making process.

Significant problems also exist regarding coordination of the volumes on Dispositional Procedures and on Dispositions. Because the former volume was drafted earlier than the latter, it lacks the sophisticated procedural and evidentiary framework implicitly required by the substantive Standards contained in the latter. Also, key issues such as the precise scope of the judge's dispositional authority, and the relevance and timing of evidence regarding the defendant's social history, require clarification. These issues closely depend upon prior clarification of the substantive goals sought to be achieved at various stages of the disposition process.

The formidable administrative difficulties of coordinating a project as vast and ambitious as the Juvenile Justice Standards Project doubtless account for most of the confusions and inconsistencies discussed in this article. It would be unfortunate if the drafters' bold and innovative attempts to inspire badly needed reforms in juvenile court sentencing were permitted to flounder because of them. Hopefully, the necessary time and resources will be found to review all of the draft volumes for the purpose of clarifying ideas and eliminating inconsistencies and, wherever necessary, to decide conflicting policy issues so that the finished volumes will express a more unified, coherent system for dispositions.

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96 See note 28 supra.